

## **DIVISION OF LOCAL GOVERNMENT SERVICES**

### **LOCAL FINANCE BOARD**

#### **Submission of Electronic Proposals for Sale of Bonds; Use of Financial Surety**

#### **Bonds in Electronic Bond Sale Auctions**

#### **Adopted New Rules: N.J.A.C. 5:30-2.9 and 2.10**

**Full text** of the adopted new rules follows:

#### **5:30-2.9 Submission of electronic proposals for sale of bonds**

(a) Local units (including municipalities, counties, authorities and fire districts) planning to issue bonds may receive proposals for the competitive or negotiated sale of such bonds through an open or closed electronic auction managed by a nationally recognized electronic securities bidding service approved by the Director. Bidding services desiring to operate an open or closed electronic auction shall apply to the Director for authorization to do so by filing an application with the Director. The Director shall make available an application form that provides the Director with information regarding the technology and security practices maintained by the bidding service, the requirements to be established for bidding by bidders, the methods by which auction sales are conducted, the experience of the bidding service in conducting electronic auctions of bonds, and other information the Director may deem relevant. For the purposes of this section, a closed auction includes the submission of electronically

sealed bids that are opened at a set time and an open auction is where bidders submit bids against each other in real time.

(b) If the Director determines that the requirements and conditions of the auction are in accordance with the provisions of the Local Bond Law and the bidding service provides a secure, open and competitive opportunity for qualified bidders to submit proposals, the application shall be deemed approved. Requirements that bidders be members of the National Association of Security Dealers, have a business relationship with the Depository Trust Corporation, or require participation in a similar financial industry-based program shall not be construed as limiting competition.

(c) The Director shall post information regarding the nationally recognized electronic securities bidding services that have been approved for use by local units on the Local Finance Board website.

#### 5:30-2.10 Use of financial surety bonds in electronic bond sale auctions

(a) Subject to the requirements of this section, a local unit may accept a financial surety bond in lieu of a certified, cashier's or treasurer's check as a bid deposit as required by N.J.S.A. 40A:2-32(a).

(b) The financial surety bond must be provided by an insurance company or other guarantor that is licensed and authorized to do business in the State of New Jersey and

approved by the Director. The Director shall develop and make available an application form for issuers of financial surety bonds. Applicants shall demonstrate to the satisfaction of the Director that they possess the requisite financial capability and experience in issuing financial surety bonds to guarantee a bid deposit on the sale of government securities and further, that they possess the capability to respond to requests for the provision of financial surety bonds in a timely and secure manner for the use of bidders who seek to purchase local unit securities.

(c) Acceptance of a financial surety bond by a local unit shall be subject to the following conditions:

1. The issuer of the financial surety bond shall have received approval of the Director to issue financial surety bonds;
2. Financial surety bonds shall be made payable to the order of the issuing local unit in order for a bid to be considered;
3. The requirement or option to use a financial surety bond in the bond sale shall be included in the notice of sale of the bonds;
4. Proof of the financial surety bond must be submitted to the local unit or its agent by a fixed time on the day prior to the opening of the bids;
5. Each financial surety bond must identify the bidder whose deposit is guaranteed by the financial surety bond, and shall state the time and date when it will expire. Said date shall not be earlier than the date for submission of the required deposit;
6. The notice of sale of the bonds shall require the successful bidder using a financial surety bond to submit its deposit to the local unit in such form and a time

required by the local unit, which shall be sooner, than but no later than 48 hours of the award of the bonds;

7. If such deposit is not received by the stated time to satisfy the deposit requirement, the local unit may draw the financial surety bond;
8. The deposit of the successful bidder will be applied to the purchase price of the bonds and no interest will be paid thereon; and
9. The local unit shall retain the deposit as liquidated damages should the bidder fail to comply with the terms of the bid.